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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,336	06/07/2001	C. Edward Luker	CG-838	9101

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/14/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/876,336	LUKER, C. EDWARD	
	Examiner	Art Unit	
	Tri M. Mai	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether claim 25 is readable on the elected species. Note that Fig. 8, the elected species, shows the shortest length of the rib being about the length of the inner skirt. Clarification is requested.

Claim Rejections - 35 USC § 102/103

2. Claims 32, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Elkner (D202827). Elkner teaches a closure having a top, first and outer skirts, thread on the inner skirt, and ribs as claimed.

3. Claim 32 is rejected under 35 U.S.C. 102(b) as being anticipated by Robinson (5915576). Robinson teaches a container closure with a top with first and second concentric skirts depending for the top, and at least one rib 82, 84, and a thread on the inner skirt.

4. Claims 28, 33, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of either Miller (3869057) or Abbott (D24862). Robinson meets all claimed limitations except for the closure having a frusto-conical shape. Either Miller or Abbott teaches that it is known in the art to provide a closure having a frusto-conical shape. It would have been obvious to one of ordinary skill in the art to provide a closure having frusto-conical shape in Robinson as taught by either Miller or Abbott to provide the desired appearance for the closure and/or to provide a better grip.

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5. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Le Brun, Jr. (3958709). Robinson meets all claimed limitations except for the first portion extending the length of the inner skirt and the second portion extending the length of the outer skirt. Le Brun, Jr. teaches that it is known in the art to provide ribs 117 in Fig. 8 with the first portion extending the length of the inner skirt and the second portion extending the length of the outer skirt. It would have been obvious to one of ordinary skill in the art to provide the ribs with the length of the inner skirt and the second portion extending the length of the outer skirt in Robinson as taught by Le Brun to provide the desired support.

Furthermore, to the degree it is argued that the second portion does not extend the length of the outer skirt, it would have been obvious to one of ordinary skill in the art to provide a second portion extending the length of the outer skirt in the Robinson as taught by Le Brune to provide the desired support for the closure.

6. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Marques et al. (5238130). Robinson meets all claimed limitations except for the closure having a flange. Marques teaches that it is known in the art to provide a flange 44. It would have been obvious to one of ordinary skill in the art to provide a flange in Robinson as taught by Marques to provide a better seal.

7. Claims 22-26, 29-31, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Robinson combination, as set forth in paragraph 5, and further in view of Le Brun, Jr. The Robinson combination meets all claimed limitations except for the first portion extending the length of the inner skirt and the second portion extending the length of the outer skirt. Le Brun, Jr. teaches that it is known in the art to provide ribs 117 in Fig. 8 with the first

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portion extending the length of the inner skirt and the second portion extending the length of the outer skirt. It would have been obvious to one of ordinary skill in the art to provide the ribs with the length of the inner skirt and the second portion extending the length of the outer skirt in Robinson as taught by Le Brun to provide the desired support.

Furthermore, to the degree it is argued the second portion does not extend the length of the outer skirt, it would have been obvious to one of ordinary skill in the art to provide a second portion extending the length of the outer skirt in the Robinson combination as taught by Le Brune to provide the desired support for the container.

Regarding claims 31, and 40, note the L-shaped ribs 119 in Fig. 8 of Le Brun, Jr. and tapered lower edge.

8. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Robinson combination, as set forth in paragraph 4, in view of Marques et al. The Robinson combination meets all claimed limitations except for the closure having a flange. Marques teaches that it is known in the art to provide a flange 44. It would have been obvious to one of ordinary skill in the art to provide a flange in the Robinson combination as taught by Marques to provide a better seal.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Robinson combination, as set forth in paragraph 7, in view of Marques et al. The Robinson combination meets all claimed limitations except for the closure having a flange. Marques teaches that it is known in the art to provide a flange 44. It would have been obvious to one of ordinary skill in the art to provide a flange in the Robinson combination as taught by Marques to provide a better seal.

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10. Claim 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Landen (3944101) in view of Earls (4273247), and further in view of Le Brun, Jr. Landen teaches a container closure with a top with first and second concentric skirts depending for the top, and a thread on the inner skirt. Landen meets all claimed limitations except for the ribs. Le Brun, Jr. teaches that it is known in the art to provide ribs 117 in Fig. 8 with the first portion extending the length of the inner skirt and the second portion extending the length of the outer skirt. It would have been obvious to one of ordinary skill in the art to provide the ribs with the length of the inner skirt and the second portion extending the length of the outer skirt in Robinson as taught by Le Brun to provide the desired support.

Earls further teaches that it is known in the art to provide ribs for structural support between two skirts. It would have been obvious to one of ordinary skill in the art to provide the ribs between the two skirts in Landen as taught by Earls to provide structural support.

Furthermore, to the degree it is argued the second portion does not extend the length of the outer skirt, it would have been obvious to one of ordinary skill in the art to provide a second portion extending the length of the outer skirt in Landen as taught by Le Brune to provide the desired support for the closure.

11. Claim 22-26, 36, and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Landen combination as set forth in paragraph 10, and further in view of either Miller (3869057) or Abbott (D24862). The Landen combination meets all claimed limitations except for the closure having a frusto-conical shape. Either Miller or Abbott teaches that it is known in the art to provide a closure having a frusto-conical shape. It would have been obvious to one of ordinary skill in the art to provide a closure having frusto-conical shape in the Landen

combination as taught by either Miller or Abbott to provide the desired appearance for the closure and/or to provide a better grip.

12. Claims 27, 35, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Landen combinations as set forth in paragraphs 10 and 11, and further in view of Marques et al. The Robinson combination meets all claimed limitations except for the closure having a flange. Marques teaches that it is known in the art to provide a flange 44. It would have been obvious to one of ordinary skill in the art to provide a flange in the Robinson combination as taught by Marques to provide a better seal.

Response to Arguments

13. Applicant's arguments with respect to the claims have been considered but they are not persuasive. With respect to the Robinson in view of Miller or Abbott combination, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the only change required in Robinson is with respect to the shape of the outer skirt being frusto-conical. It is submitted that either Miller or Abbott teaches that it is known in the art to provide a closure having a frusto-conical shape. It would have been obvious to one of ordinary skill in the art to provide a closure having frusto-conical shape in Robinson as taught by either Miller or Abbott to provide the desired appearance for the closure and/or to provide a better grip.

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Clearly, it is within one of ordinary skill in the art to provide the desired shape and dimension of the closure such as the frusto-conical shape in either Miller or Abbott.

Furthermore, A change in shape would have been an obvious matter, since the claimed shape is anything more than one of numerous configurations a person of ordinary skill in the art would find obvious. (See *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459).

Furthermore, matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In *re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947)

The arguments directed to other claims have been considered but are moot in view of the new grounds of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai 
Primary Examiner
Art Unit 3727

May 9, 2003